

FILED

December 11, 2013
**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the matter of:

MICHAEL P. FLATLEY, D.P.M.

CONSENT ORDER

This matter was opened before the New Jersey State Board of Medical Examiners (the "Board") upon the Board's receipt of a report from the Medical Practitioner Review Panel (the "Panel") detailing the results of the Panel's investigation of respondent Michael R. Flatley, D.P.M. Specifically, the Panel commenced an investigation of respondent's conduct after receiving an Adverse Action Report dated April 17, 2012 from Kennedy University Hospital ("Kennedy"), which disclosed that Dr. Flatley's privileges at Kennedy were summarily suspended on April 16, 2012, following Kennedy's receipt of a report from a podiatric resident (hereinafter identified as E.D.) of an incident of "unwanted physical romantic contact on [the] part of Dr. Flatley" that occurred on April 11, 2012. At the time of the suspension, Dr. Flatley was an attending podiatrist, who had responsibilities to train and supervise podiatric residents, including E.D. After Dr. Flatley appealed Kennedy's action, he and Kennedy entered into a settlement agreement, pursuant to which the suspension was limited to fifteen days (concluded on May 1, 2012), Dr. Flatley was required to complete training in sexual harassment, and he was dismissed from further participation as a trainer or

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supervising attending in Kennedy's podiatric residency program. Dr. Flatley also agreed to have no further contact with any podiatric residents for any reason and agreed that he would not utilize the services of any podiatric resident in the care of any of his patients.

The Panel reviewed available information concerning this matter, to include documentation supplied by Kennedy, certifications secured by the Enforcement Bureau from the Chief Resident and the Program Director of Kennedy's podiatric residency program, a certification from E.D., and testimony offered by respondent when he appeared for an investigative hearing before the Panel on October 19, 2012, represented by Jeffrey Resnick, Esq. Additionally, the Panel reviewed copies of text messages exchanged between Dr. Flatley and E.D. during the thirty-six hour period following the April 11, 2012 incident, which text messages had been retained by E.D., photocopied from her cell phone and then supplied to the hospital administration during the course of the hospital investigation.

At the conclusion of its investigation, the Panel determined that available evidence supports findings that, on April 11, 2012, respondent followed E.D. into a supply closet, closed the door to that closet, grabbed E.D.'s arm and pulled her close to him, stuck his tongue down her throat and attempted to put his other hand inside her pants. When E.D. pushed him away, respondent then said that he "shouldn't have done that" and walked away.

While Dr. Flatley denied the allegations made when testifying before the Panel, the Panel specifically found that E.D.'s

claims were corroborated by the content of the text messages that she and Dr. Flatley exchanged following the incident.¹ The Panel thus found Dr. Flatley's denial of E.D.'s claims not to be credible. The Panel concluded that Dr. Flatley engaged in professional misconduct, to include inappropriate sexual contact and sexual harassment. The Panel further found that the gravity of the misconduct was magnified by the fact that it was directed at a podiatric resident who was Dr. Flatley's subordinate.

The Board adopts all findings made by the Panel, and thus concludes that bases for disciplinary sanction against respondent exist pursuant to N.J.S.A. 45:1-21 (e) and 45:-21(h) [based in turn on a finding that respondent's conduct violated N.J.A.C. 13:35-6.3(h)]. Respondent neither admits nor denies the specific findings made herein, but agrees to the entry of this Order for purposes of settlement with the Board. The parties desiring to resolve this matter without the need for further administrative proceedings, and the Board being satisfied that good cause exists for the entry of this Order,

IT IS on this 11 day of December, 2013

ORDERED and AGREED:

1

Specific messages exchanged between Dr. Flatley and E.D. which corroborate her claims include a message wherein Dr. Flatley acknowledged sticking his tongue down E.D.'s throat (specifically, Dr. Flatley texted "Ur right" in response to E.D.'s text "U shoulda never stuck ur tongue down my throat to begin w") and a message wherein Dr. Flatley conceded that the events occurred because he was "weak" (Dr. Flatley texted "What do u want me to say??? I don't know, I'm weak I guess" in response to E.D.'s text "Ugh then y did u let that happen.").

1. The license of respondent Michael Flatley, D.P.M., to practice podiatry in the State of New Jersey is suspended for a period of one year, the entirety of which shall be stayed and served as a period of probation provided that respondent timely and fully complies with all terms of this Order. In the event that respondent violates or otherwise fails to timely comply with any provision of this Order, he shall be deemed to have violated the terms of his probation, and the Board may then summarily enter an Order requiring him to serve any or all of the one year period of suspension actively.

2. Respondent is assessed a civil penalty in the amount of \$7,500. \$2500 of the proposed penalty shall be payable at the time of entry of this Order, \$2,500 shall be due and payable not later than six months from the date of entry of this Order, and the final \$2,500 shall be due and payable not later than twelve months from the date of entry of this Order.

3. Respondent shall, immediately upon the entry of this Order, enroll in and fully participate with the Professional Assistance Program of New Jersey (the "PAP"). Respondent shall authorize (and provide any necessary written consent necessary) the PAP to prepare and forward confidential quarterly written status reports to the Board, which reports shall detail the extent and conditions of respondent's participation with the PAP, and respondent shall further authorize (and provide any written consent necessary) the PAP to prepare and forward an "immediate" written report to the Board in the event that respondent fails to fully participate with

the PAP, otherwise fails to comply with any conditions or requirements that may be placed upon him by the PAP, or in the event that the PAP obtains any evidence that respondent has engaged in any further inappropriate sexual conduct. The Board's receipt of any "immediate" report shall be deemed to be a violation of this Order and grounds upon which the Board may activate the stayed portion of the suspension of his license.

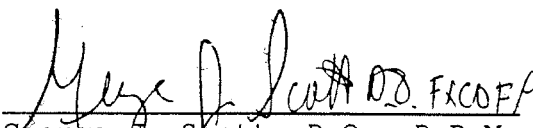
4. Respondent shall, within six months of the date of entry of this Order, make arrangements for and secure a comprehensive psychosexual evaluation, which evaluation shall be performed by an individual or entity acceptable to the Board with recognized expertise in the evaluation of sexual misconduct by professionals, to include (without limitation) the Joseph J. Peters' Institute in Philadelphia, Pennsylvania. In the event respondent elects to secure the evaluation from any individual or entity other than the Joseph J. Peters' Institute, he shall need to first secure approval from the Board for the proposed evaluator. Prior to the evaluation, the approved evaluator shall be provided with a copy of this Order and with all investigative information reviewed by the Panel. Respondent shall authorize (and provide any written consent necessary) the evaluating individual or entity to provide a confidential written evaluation report to the Board and to the PAP, which report shall detail any findings made at the time of evaluation and include recommendations whether Dr. Flatley would benefit from, or otherwise should be required to secure, any additional evaluations, counseling or treatment. Dr. Flatley herein agrees in advance that, in the

event any recommendations are made for additional evaluation, counseling or treatment, he shall fully and timely comply with such recommendations, that his compliance with any such recommendations shall be overseen by the PAP, and that any such recommendations shall be deemed to be conditions of his full participation with the PAP.


5. Respondent shall, within six months of the date of entry of this Order, attend and successfully complete a course, acceptable to the Board, in medical ethics and professional boundaries. Respondent may satisfy the requirements of this paragraph by attending any professional boundaries course that has previously been approved by the Board (a list of which he may obtain from the Board office), or by obtaining written approval for any other course that he may propose to take to satisfy the requirements of this paragraph from the Board's consultant Medical Director (which approval may be sought by providing all available information about any proposed course to the Medical Director for review). Respondent is responsible to ensure that documentation of his successful completion of any proposed course is provided directly to the Board by the course provider.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By:

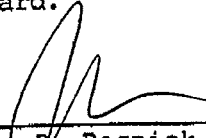

George P. Scott, D.O., D.P.M.
Board President

I represent that I have carefully read and considered this Order, understand its terms and consent to the entry of the Order by the Board.


Michael P. Flatley, D.P.M.


Dated: 11/19/13

Consent to form of Order and entry of Order by Board.


Jeffrey B. Resnick, Esq.
Counsel for Respondent

Dated: 11/19/13

Consent, on behalf of the Professional Assistance Program of New Jersey, to monitor Dr. Flatley in a manner consistent with the terms of this Order and to make all reports to the Board required by this Order.


Louis E. Baxter, Sr., M.D.,
FASAM
Executive Medical Director

Dated: 11/20/13

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.